

**Air Pollution Control Advisory Council Meeting  
January 8, 2004 - 2:00 p.m.-4:00 p.m.  
Lee Metcalf Building - Room 111  
Montana Department of Environmental Quality (DEQ)**

**ATTENDEES:**

**Council Members**

Dean Johnson, Chairman  
Mitchell Leu  
Diane Lorenzen  
Rich Southwick  
Mike Machler  
Chris Kolstad  
Kathy Harris

**Other Attendees**

Charles Homer, DEQ  
Vickie Walsh, DEQ  
Eric Merchant, DEQ  
Jan Brown, DEQ  
Debbie Skibicki, DEQ  
Brian Hohn, DEQ  
Elton Erp, DEQ  
Howard Haines, DEQ  
Michael Kakuk, MT  
Contractors Association  
Gail Abercrombie,  
MT Petroleum Association.  
Don Allen, Western  
Environmental Trade Association.

**1. Call to Order**

Chairman Dean Johnson called the Air Pollution Control Advisory Council (APCAC) meeting to order on January 8, 2004 at 2:00 p.m. in room 111 of the Metcalf Building in Helena, Montana. Sufficient Members were present to constitute a quorum. Dave Noell, Brad Black, and Linda Dworak were absent.

- a) The September 11, 2003 minutes were approved.
- b) New business: the new clerk was introduced and the reorganization at DEQ described.
- c) Election of new Chairperson for 2004. Diane Lorenzen nominated Mike Machler, Mitchell Leu seconded. Mr. Machler was unanimously elected.

**2. Housekeeping Remarks: Bob Habeck, Planning Prevention and Assistance Section (PPA), DEQ.**

- a) The 2004 calendar was handed out.

**3. Rulemaking Action Items.**

- a) IBR Rulemaking review. Mr. Habeck explained that proposed rules must be brought before APCAC to seek comment. At the last meeting there was a proposed rulemaking for an Incorporation by Reference and it didn't seem necessary to gather APCAC for one item. To satisfy the rulemaking criteria, it was mailed out.
- b) Top-down BACT. Eric Merchant addressed the Council. The Board of Environmental Review (BER) ordered DEQ to develop a top-down BACT process rule as a result of litigation surrounding the recent Roundup Power Project appeal

before BER. The DEQ developed the Montana BACT Process and Procedures Manual – 2004 Edition. This document was developed from EPA’s 1990 Draft NSR Manual. This document would be incorporated by reference as a rule due to its large content. The proposed rule provides BER with three options regarding the universe of sources that would be subject to the top-down BACT rule (see Attachment A).

There are two new options added to Section III.A.3 of the MT BACT Manual BER will consider these options and the issue of redefining the source through the top-down BACT process (see Attachment A).

**APCAC Discussion:**

Ms. Lorenzen asked Mr. Merchant if these were options for BER to consider. Mr. Merchant responded that they are and the current status of the top-down BACT rule is that rulemaking will be initiated at the January 30, 2004 BER meeting.

Ms. Lorenzen asked about the process of rulemaking in front of the BER. Mr. Homer explained that BER determines whether or not a rule is to be considered. Once BER adopts a rule by reference it remains in effect until BER changes it.

Mr. Johnson asked if HB 521 applies; if the state rule cannot be more stringent than the federal requirements. Mr. Homer answered that DEQ’s legal unit has not answered that question yet.

Mr. Leu asked if the rule would be more stringent than the federal DEQ had taken the rule from the guidance manual. Mr. Merchant said that BACT provisions don’t change; only the BACT process changes.

Ms. Lorenzen asked whether DEQ saw any advantage to adopting this rule? Mr. Homer responded that DEQ is merely acting as the staff to BER on this matter.

Ms. Lorenzen asked about the power of APCAC to influence BER’s consideration of this rule? Mr. Habeck explained APCAC can make a recommendation to DEQ to consider the rulemaking.

**Public Discussion:**

Michael Kakuk, representing the Montana Contractor’s Association. Mr. Kakuk presented his opinion that the proposed rule is more stringent than the federal requirements (See Attachment B). He proposed DEQ or BER make statutorily required findings that the proposed rule:

- Protects public health or the environment
- Can mitigate harm to the public health or the environment
- Is achievable with current technology.

The rule is not procedural but substantive and BER should not adopt it. Could APCAC make a formal recommendation that BER not proceed in adopting this rule?

Gail Abercrombie, representing the Montana Petroleum Association. Ms. Abercrombie stated the rule opens the door for more appeals and there are too many hoops to jump through for businesses to be interested in operating in Montana.

Don Allen, representing the Western Environmental Trade Association. Mr. Allen stated the adoption of this rule is of major concern to his group and he asked APCAC to recommend BER not go forward with this rule.

Mr. Johnson asked for clarification regarding the consideration of fuel products an immutable feature of a gravel crusher. Mr. Homer responded that

Ms. Lorenzen commented that DEQ has a timeframe to respond to permits and a complicated process will keep DEQ from staying within the timeframe. It would be more cost effective to train the staff.

Mr. Johnson said A is quorum existed and APCAC could vote to make a recommendation to BER to go forward or not go forward or go as individuals and not as APCAC.

Mr. Leu stated that the existing rules work and this would muck up the waters.

#### **APCAC Motion:**

A motion was made that APCAC recommend to BER to forestall this ruling. Lorenzen seconded the motion and said she wanted DEQ to reconsider its position.

Upon a call for further discussion, Mr. Habeck clarified APCAC and BER roles. APCAC acts in an advisory capacity to DEQ and DEQ acts as staff to BER. Mr. Johnson amended Mr. Leu's motion: APCAC recommends the DEQ convey to the BER that APCAC does not support the initiation of the Top-Down BACT rule. Ms. Lorenzen seconded.

Upon a call for further discussion, Mr. Habeck expressed concern as to how DEQ could make APCACs recommendation known to BER. He suggested two options:

1. Written and submitted as part of public comment with the Chairman's signature.
2. Orally at the time of the BER meeting to initiate rulemaking.

APCAC voted unanimously in favor of the motion.

#### **4. Discussion Items:**

- (a) Oil & Gas Industry – Flash Emissions, Vicky Walsh. The State-EPA Oil and Gas Task Force (Task Force) is a partnership formed between the Region 8 states and the Regional EPA office to evaluate the

concern of potential emissions from oil and gas production facilities within our Region. Potentially large amounts of volatile organic chemicals and HAP emissions may be emitted from oil and natural gas facilities as a result of flashing emissions, well dehydration units, HAP emissions from well site engines, and other well site emission sources. The potential exists for sources to operate without controls and without a federally enforceable permit limit above the thresholds for PSD, Title V, and state minor source permitting. The Task Force is evaluating the potential emissions and their control. The Task Force will be gathering information from a small group of sources to assess regulatory concerns and will keep APCAC updated as developments occur.

(b) Air toxics regulations - Deb Wolfe (see Attachment B). Ms. Lorenzen asked Ms. Wolfe to speak to the issue of establishing ambient air quality standards for toxic air pollutants. Ms. Wolfe reviewed pertinent portions of the Federal Clean Air Act (CAA) and the Clean Air Act of Montana; discussed Idaho's toxic air pollutants (TAP) standards, and EPA's approach to addressing air toxics. The process of establishing standards would require rulemaking by BER and the pre-rule process. It would then require the formal public hearings and BER approval on all TAPs.

Elton Erp discussed toxological standards and methodologies of testing and monitoring for them.

(c) Yellowstone Winter Use Air Quality Update - Howard Haines (see Attachment C). DEQ has actively worked to reduce emissions in Yellowstone National Park.

Howard set out the chronology and some points of contention:

January 2001 - National Park Service (NPS) published rules with a phase-out of snowmobiling starting December 2003.

The International Snowmobile Manufacturers Association and the State of Wyoming filed suit challenging the ruling.

December 11, 2003 court settlement between International Snowmobile Manufacturers' Association (ISMA) & Wyoming v. NPS required a supplemental EIS.

December 16, 2003 - U.S. District Court vacated the December 11, 2003 ruling and implemented the January 2001 rules.

ISMA & Wyoming asked for a stay of the December 16, 2003 ruling for economic reasons. The court denies the stay.

ISMA & Wyoming appeal for an emergency stay still pending before the D.C. Circuit Court of Appeals in Washington D.C.

January 5, 2004 - Wyoming Attorney General requests a stay of the January 2001 regulations in federal court. The earliest a decision could be made is January 12, 2004 but the court will likely act later.

Governor Martz ask the Montana Attorney General to join the appeal. The Attorney General is investigating the issue (See Attachment D).

DEQ actively worked to reduce emissions in Yellowstone Park. In 1997 YNP used DEQ research to use ethanol blend fuels, cleaner lubricants, and lower polluting machines, which inspired the industry to develop the 4 stroke snowmobile. DEQ will continue to monitor emissions and await the ruling on the appeal.

Ms. Lorenzen asked about the number of people entering the park. Mr. Haines said there had been a 294 per day limit that hasn't been met yet and some 30,000 cancellations.

Ms. Lorenzen asked if the changes made to the fuel were healthy. Mr. Haines said it has been.

**5. General Public Comment:**

Gail Abercrombie expressed concern about flash emissions.

**6. Confirm Next Meeting Date:**

Mr. Johnson confirmed the next meeting of APCAC on March 11, 2004. A motion to adjourn was made and seconded and the meeting was duly adjourned at 4:00 p.m.

END OF MINUTES

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